

§ 14.604 Filing a claim.

(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, will be furnished a copy of SF 95, Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place. He or she will also be advised to submit the information prescribed by 28 CFR 14.4 to the extent applicable. If a claim is presented to the Department of Veterans Affairs which involves the actions of employees or officers of other agencies, it will be forwarded to the Department of Veterans Affairs General Counsel, who will transmit forthwith to the appropriate agency.

(b) A claim shall be deemed to have been presented when the Department of Veterans Affairs receives from a claimant, his or her duly authorized agent or legal representative, an executed SF 95, or other written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death: *Provided, however,* That before compromising or settling any claim, an executed SF 95 shall be obtained from the claimant.

(c) A claim presented in compliance with paragraphs (a) and (b) of this section may be amended by the claimant at any time prior to final Department of Veterans Affairs action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department of Veterans Affairs shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment (see § 14.600(b)(1)).

[42 FR 41414, Aug. 17, 1977, as amended at 61 FR 27784, June 3, 1996]

LITIGATED CLAIMS

§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

(a)(1) Section 2679 of title 28 U.S.C., provides that no suit will lie against a Federal employee, or the employee's estate, for damage to property, personal injury, or death resulting from his or her wrongful act or omission while acting within the scope of his or her office or employment with the Federal Government. An action against the United States under 28 U.S.C. 2671–2680 is the exclusive remedy under these circumstances.

(2) Section 7316 of title 38 U.S.C., provides that (i) where there is remedy against the United States under 28 U.S.C. 2671–2680, or (ii) where proceedings for compensation or other benefits from the United States are provided by law, and the availability of such benefits precludes a remedy under 28 U.S.C. 2671–2680 (as is the case, for example, in the Federal Employees' Compensation Act, 5 U.S.C. 8101, *et seq.*), such recourse is the exclusive remedy for property damage, personal injury, or death allegedly occurring as a result of malpractice or negligence committed by a physician, dentist, nurse, physician's assistant, dentist's assistant, pharmacist or paramedical (for example, medical and dental technicians, nursing assistants, and therapists), or other supporting personnel, while furnishing medical care and treatment in the exercise of duties in or for the Veterans Health Administration. Accordingly, a malpractice or negligence suit for property damage, personal injury, or death will not lie against such personnel under the circumstances set forth in this subparagraph.

(b) The Department of Justice will defend any civil action or proceeding brought in any court against persons referred to in paragraph (a) (1) or (2) of this section under the circumstances set forth therein. Accordingly, when a suit is filed against any employee of the Department of Veterans Affairs as a result of a wrongful act or omission arising out of employment with the